## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DONALD R. STANBRO,	)
Plaintiff,	}
v.	Civil No. 05-248
COMMISSIONER OF SOCIAL SECURITY,	)
Defendant.	)

## Memorandum Order

Presently before the Court is Plaintiff's Motion for Award of Attorney's Fees Pursuant to 28 U.S.C. 2412, the Equal Access to Justice Act (Doc. 17). The Government has filed a Brief in Opposition to Plaintiff's Motion arguing that Plaintiff's petition for attorney fees is untimely. It appearing that the government is correct, we will deny Plaintiff's motion.

On March 27, 2007, we reversed the final decision of the Commissioner and remanded this action to the Commissioner to calculate benefits. Pursuant to Federal Rule of Appellate Procedure 4(a), the time for appeal expired sixty days after entry of our judgment on March 27, 2007. In this case, the final day for filing an appeal would have been May 29, 2007.

Pursuant to the Equal Access to Justice Act, a prevailing party must apply for fees "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). Because no appeal was filed in this case by May 29, 2007, our March 27, 2007 judgment became final and no longer appealable. Plaintiff had until June 28, 2007, to file an application of attorney fees. The present motion was not filed until July 25, 2007, well beyond thirty days of the final judgment in this action. Therefore, Plaintiff's motion for attorney fees is untimely and must be denied.

The following Order is hereby entered.

AND NOW, to-wit, this day of September, 2007, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Award of Attorney's Fee Pursuant to 28 U.S.C. 2412, the Equal Access to Justice Act (Doc. 17), be and hereby is DENIED.

Maurice B. Cohill, Jr.
United States District Court Judge

cc: Counsel of Record